Supreme Court of the United States. It is ordered by the Court that the motion be, and it hereby is, granted.

61 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Designation of record

Filed June 23, 1936

The clerk in the preparation of the transcript of record on petition for certiorari to the Supreme Court of the United States will include the following:

1. Printed record.
2. Note of argument.
3. Opinion of the court.
4. Decree.
5. Memorandum of filing motion to stay mandate.
6. Minute entry granting stay of mandate.
7. This designation.
8. Clerk's certificate.

STANLEY REED,
Solicitor General.

[File endorsement omitted.]

62 [Clerk's certificate to foregoing transcript omitted in printing.]

63 Supreme Court of the United States

Order allowing certiorari

Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(Endorsement on cover:) File Nos. 40806, 40807, 40808. District of Columbia, U. S. Court of Appeals. Term No. 266. Harold L. Ickes, Secretary of the Interior, petitioner, vs. Mazine Z. Fox et al. Term No. 267. Harold L. Ickes, Secretary of the Interior, petitioner, vs. Phillip Louis Parks et al. Term No. 268. Harold L. Ickes, Secretary of the Interior, petitioner, vs. Jacob F. Ottmuller. Petition for writs of certiorari and exhibits thereto. Filed August 7, 1936. Term Nos. 266 O. T. 1936, 267 O. T. 1936, 268 O. T. 1936.

U. S. GOVERNMENT PRINTING OFFICE: 1936

FILE COPY

Nos. 246-247-268

In the Supreme Court of the United States

OCTOBER TERM, 1939

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

v.

MAZINE Z. FOX, ET AL.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

v.

PHILIP LOUIS PARKS, ET AL.

HAROLD L. ICKES, SECRETARY OF THE INTERIOR, PETITIONER

v.

JACOB F. OTTENHEIMER

PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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In the Supreme Court of the United States

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HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
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v.

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v.

PHILLIP LOUIS PARKS, ET AL.

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HAROLD L. ICKES, SECRETARY OF THE INTERIOR,
PETITIONER

v.

JACOB F. OTTMULLER

PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General, on behalf of the United States, prays that writs of certiorari issue to re-

view the judgments of the United States Court of Appeals for the District of Columbia entered in the above causes on June 8, 1936, affirming the judgments of the Supreme Court of the District of Columbia, now the United States District Court for the District of Columbia.

OPINIONS BELOW

The Supreme Court of the District of Columbia filed a brief memorandum opinion relating to the motions for leave to file amended bills of complaint (Fox, R. 29; Parks and Ottmuller, R. 22) which was, in effect, adopted in the memorandum opinion upon the motions to dismiss (Fox, R. 47; Parks, R. 38; Ottmuller, R. 44). The opinion of the Court of Appeals (Fox, R. 52; Parks, R. 43; Ottmuller, R. 49) has not yet been reported.

JURISDICTION

The judgments of the Court of Appeals were entered on June 8, 1936 (Fox, R. 60; Parks, R. 51–52; Ottmuller, R. 57–58). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Is the United States an indispensable party defendant in these actions?

2. Did the bills of complaint fail to disclose a basis for equitable jurisdiction?

STATUTES INVOLVED

The cases relate to a Federal reclamation project in the State of Washington, authorized by the reclamation law (c. 12, U. S. C., Title 43) and applicable statutes of the State of Washington (Remington's Revised Statutes of Washington, §§ 7408–7415). The pertinent provisions are set forth in the Appendix (*infra*, pp. 17–29).

STATEMENT

These were three special appeals to the United States Court of Appeals for the District of Columbia by the Secretary of the Interior, Harold L. Ickes, from orders of the Supreme Court of the District of Columbia which denied his motions to dismiss amended bills in equity brought, in the language of the bills, to require him to vacate certain notices and orders relating to the Sunnyside Unit of the Yakima Project, a Federal reclamation project in the State of Washington, and to restore respondents "to the rights and privileges which they enjoyed prior to the promulgation of said notices and orders" (Fox, R. 39; Parks, R. 31; Ottmuller, R. 32). The three cases have, for purposes of argument, been consolidated in both of the lower courts.

Pursuant to the reclamation law (U. S. C., Title 43, c. 12) and applicable statutes of the State of Washington (Remington's Revised Statutes of Washington, §§. 7408–7415), the United States

undertook the construction and operation of the Yakima Project, and in connection therewith purchased from the Washington Irrigation Company the Sunnyside Canal, water appropriations, and irrigation system used in connection therewith (Fox, R. 30; Parks, R. 23; Ottmuller, R. 23).

Before the owners of the lands within the Sunnyside Unit of the Yakima Project now held by the respondents could procure from the proposed irrigation system water for the irrigation of said lands, it was necessary that they execute and deliver to the United States water right applications or contracts (Fox, R. 31, 16, 19, 22; Parks, R. 24, 14; Ottmuller, R. 25, 34). By virtue of these water right applications and contracts, respondents' predecessors became entitled to receive designated amounts of water from the United States under specified conditions.

Thereafter public notice was given under date of October 17, 1930, by Assistant Secretary of the Interior Edwards that, although it had theretofore been possible to allow users of the Sunnyside District temporarily to use water in excess of the amounts specified in their applications and contracts, it had become necessary to restrict such users to their specified amounts (Fox, R. 43–44; Parks, R. 34–36; Ottmuller, R. 40–41). Pursuant to this notice and, in the Parks case, a later notice of May 5, 1932 (Parks, R. 36–37), respondents were limited to substantially smaller amounts of water

than they had theretofore received (Fox, R. 34–35; Parks, R. 27; Ottmuller, R. 28).

Respondents by three similar bills of complaint filed September 24, 1934 sought to enjoin petitioners from enforcing these orders (Fox, R. 1–11; Parks, R. 1–10; Ottmuller, R. 1–11). Upon motion of petitioner these bills were dismissed on the ground that they each sought specific enforcement of contracts of the United States (Fox, R. 28; Parks, R. 20; Ottmuller, R. 21). Respondents with leave of court (Fox, R. 29; Parks, R. 22; Ottmuller, R. 22–23) filed amended bills (Fox, R. 29–39; Parks, R. 22–31; Ottmuller, R. 23–32). Petitioner's motions to dismiss the amended bills on the same grounds (Fox, R. 46–47; Parks, R. 37–38; Ottmuller, R. 43–44) were denied for the reasons that the orders deprived respondents of vested rights and that the suits were not brought against the United States but to set aside arbitrary acts of petitioner (Fox, R. 47–48, 29; Parks, R. 38, 22; Ottmuller, R. 44–45, 22). Upon special appeal to the Court of Appeals this decision, for reasons referred to hereafter, was affirmed, Mr. Justice Stephens dissenting (Fox, R. 52–60; Parks, R. 43–52; Ottmuller, R. 49–58).

SPECIFICATION OF ERRORS TO BE URGED

The United States Court of Appeals for the District of Columbia erred:

1. In holding that the Supreme Court of the District of Columbia had jurisdiction to entertain

these suits, in substance and effect suits to compel specific performance of contracts to which the United States is a party and to affect property in which it has an interest.

2. In holding that the present suits do not seek in substance and effect specific performance of contracts to which the United States is a party.

3. In holding that the United States was not an indispensable party defendant in these suits.

4. In failing to hold that the amended bills of complaint and the exhibits attached thereto and made a part thereof show that the suits were brought on contracts to which the United States is a party, and that the decree prayed for would affect the interests of the United States in said contracts and the property of the United States, and that consequently the court was without jurisdiction.

5. In failing to hold that the remedy at law was adequate, and that hence the court lacked equity jurisdiction.

6. In affirming the judgment of the Supreme Court of the District of Columbia, denying the respondent's motions to dismiss the amended bills of complaint.

REASONS FOR GRANTING THE WRIT

I

1. The decision of the United States Court of Appeals for the District of Columbia is not in accord with the decision of this Court in the case of

State of Arizona v. *State of California, et al.*, No. —, Original, October Term 1935, decided May 25, 1936.

Unquestionably the United States acquires, by virtue of a reclamation project undertaken pursuant to the reclamation law and applicable state law, an interest in the waters which it appropriates and stores for irrigation purposes. *Ide* v. *United States*, 263 U. S. 497; *United States* v. *Union Gap Irrigation Dist.*, 39 F. (2d) 46 (C. C. A. 9th); *West Side Irrigation Co.* v. *United States*, 246 Fed. 212 (C. C. A. 9th). See *Arizona* v. *California, supra*, pamphlet p. 9. Cf. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 330. The present bills allege that they involve an approved irrigation and reclamation project and disclose that respondents have availed themselves of the benefits of the reclamation law (Fox, R. 30–33; Parks, R. 23–25; Ottmuller, R. 23–26). No question has been raised as to the propriety of the project and, indeed, under the circumstances, none could be raised by respondents. The relief sought by respondents is the vacation of certain notices and orders limiting the amount of water controlled by the United States pursuant to the reclamation law, which respondents may receive pursuant to their water rights and the restoration of respondents "to the rights and privileges which they enjoyed prior to the promulgation of said notices and orders" (Fox, R. 39; Parks, R. 31; Ottmuller, R. 32). Wholly apart from any technical question of title in the waters controlled by the

United States, a decree granting such relief, as this Court said in *Arizona* v. *California, supra* (pamphlet, p. 10), "could not be framed without the adjudication of the superior rights asserted by the United States." Furthermore, the orders attacked by respondents recite (Fox, R. 44; Parks, R. 35; Ottmuller, R. 41) that the diminution of the amounts of water respondents would thereafter receive was required for the performance by the United States of its contract with the Kittitas Reclamation District. As in *Arizona* v. *California, supra* (pamphlet, p. 10), the present bills plainly challenge dispositions agreed to by contracts of the United States. That decision requires the dismissal of the present bills because of the absence of the United States as a party defendant.

2. The opinion of the Court of Appeals is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in *American Falls Reservoir District No. 2* v. *Crandall, et al.*, 82 F. (2d) 973.

There the United States had in 1927 entered into a contract with the reservoir district to deliver to the district a certain quantity of the waters of the Snake River, Idaho, stored by the Government in the American Falls Reservoir. Thereafter both natural flow water appropriated by the United States and stored water controlled by it were delivered to the district under the contract. In 1933 no natural flow water was so delivered and the district thereupon sought to require delivery of a

given amount of such water, claiming that under a specific provision of the Idaho Constitution the United States had by the prior deliveries dedicated to the use of the district an amount of the natural flow water. The Secretary of the Interior, who was made a party defendant, filed a motion to dismiss on the ground that the United States was an indispensable party. In its opinion sustaining this motion, the court said (p. 978):

> Of course, it could be considered that appellant has acquired a vested right, and is merely attempting to require the Secretary to proceed in conformity with the constitutional provisions [of Idaho] hereinabove quoted. However, it seems to us that the nub of the question would be, first, whether or not appellant had acquired a vested right, and to determine in favor of appellant on such a question would be depriving the United States of its property right (claimed by appellant in this suit) without giving the United States an opportunity to defend the suit. This we cannot do; therefore we hold that the suit should have been dismissed on that ground. * * *

3. In the instant cases there is no basis for any contention such as was made in the *Crandall* case, *supra,* that respondents have acquired vested rights apart from their contracts. The only rights respondents have are based on contracts with the United States and, consequently, the decision of the court below is not in accord with the decision of this Court in *Wells* v. *Roper,* 246 U. S. 335, and

departs from the rule previously established by the lower court pursuant to *Wells* v. *Roper* and left undisturbed by this Court upon application for writs of certiorari. *Boeing Air Transport* v. *Farley,* 75 F. (2d) 765, certiorari denied, 294 U. S. 728; *Transcontinental and Western Air, Inc.,* v. *Farley,* 71 F. (2d) 288, certiorari denied, 293 U S. 603; *United States ex rel. Shoshone Irrigation District* v. *Ickes,* 70 F. (2d) 771, certiorari denied, 293 U. S. 571.

It is apparent on the face of the record in each of the instant cases that the remedies sought by the respective respondents are in effect the specific enforcement of contracts with the United States. It is respondents' contention that by virtue of their actual receipt and use of water under prior governmental determination in excess of the amount fixed by the orders and notices, they have acquired property rights independent of their contractual rights (Fox, R. 32–33; Parks, R. 23, 24–25; Ottmuller, R. 25–26.) In the *Parks* case the right is alleged to have been acquired by actual use prior to the contractual arrangements with the United States (R. 23)[1], although the theory adopted by the other respondents is also relied upon (R. 24–25).

[1] The Court of Appeals states in its opinion (Fox, R. 54; Parks, R. 45; Ottmuller, R. 51) that respondents base their claims "primarily on the rights acquired by them or their predecessors by purchase from the Washington Irrigation Company." We do not understand respondents so to claim. In any event this statement is not warranted

This contention, and the opinion of the Court of Appeals in so far as it adopts respondents' argument on this point, misconceives the applicable doctrine of water-right law. A water right, in the sense of a property right acquired by prescription, can only arise from an appropriation of flowing waters from a natural stream. 2 Kinney, Irrigation and Water Rights (2d ed., 1912), Secs. 758, 759, 761. The reclamation law, which expressly adopts state laws on the subject of water rights (43 U. S. C. 383, *infra*), contains nothing to modify this general doctrine. Assuming that contract rights to use stored water, as well as perfected water rights in the property sense, are to be appurtenant to the land served (see 43 U. S. C. 372), the contract

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upon the records in these cases. As applied to respondents Fox and to respondent Ottmuller, it finds no possible support in the record. The bill of complaint in the *Parks* case asserts that prior to the initiation of the Yakima project the then owners of the land involved in that case purchased a water right for their land and "that after said purchase there was actually furnished * * * six acre-feet of water" (R. 23). It is significant that the bill does not allege that the *purchase* was of such an amount of water. On the contrary, the original bill alleged that the Washington Irrigation Company water right "was equivalent to 2.62 acre-feet" (R. 2), whereas the orders attacked by respondents Parks are alleged by them to restrict them to the use of 3½ acre-feet (R. 27). At all events, it is clear that, so far as the Irrigation Company is concerned, respondents Parks claim by virtue of use pursuant to a contract to receive stored water, not as assignees of an actual appropriation of flowing waters. The importance of this distinction in the instant cases is pointed out subsequently in the text.

rights are not thereby converted into property regardless of the terms of the agreements from which they spring. See 43 U. S. C. 479, 480, 495, 496, *infra*. *Cf. San Joaquin Co.* v. *Stanislaus County*, 233 U. S. 454, 459–460. In the instant case the only appropriator of water from a flowing stream is the United States, which acquired the appropriations of the Washington Irrigation Company (Fox, R. 30; Parks, R. 23; Ottmuller, R. 23) and, pursuant to the applicable Washington statutes, *infra*, directly acquired other appropriations.

The law of the State of Washington, like that of the arid States generally (see 2 Kinney, op. cit. *supra*, Sec. 774; Wiel, Water Rights in the Western States (3d ed., 1911), Sec. 35), recognizes that water once diverted from flowing streams becomes, in the ditches and reservoirs of the appropriators, personalty subject to contractual disposition. *Methow Cattle Company* v. *Williams*, 64 Wash. 457, 460. Such rights as respondents acquired were to receive stored water which the United States (and, as to part of the water to which respondents Parks are entitled, the Irrigation Company) had appropriated and of necessity must be derived from and subject to the applications and contracts relating thereto. *Cf. State ex rel. Krutz* v. *Washington Irrigation Co.*, 41 Wash. 283, and cases cited, *infra*, p. 14. No contention is made that the United States (or, in the *Parks* case, the Irrigation Company) assigned its appropriation or any part

thereof to respondents. It is further significant that respondents allege no use adverse to the United States (or, in the *Parks* case, to the Irrigation Company) upon which a prescriptive right could be founded even if such doctrines of real estate law were here applicable. Since the relief here sought necessarily involves the construction of contracts to which the United States is a party [2] and, hence, in effect seeks specific performance of such contracts as construed by respondents, it is clear that the suits cannot be maintained in the absence of the United States as a party. *Wells* v. *Roper, supra,* and prior decisions of the Court of Appeals cited *supra,* p. 10.

II

The decisions below are not in accord with the well settled doctrine repeatedly enunciated by this Court that where the remedy at law is adequate relief may not be afforded by a court of equity. *Hurley* v. *Kincaid,* 285 U. S. 95; *Armour & Co.* v. *Dallas,* 255 U. S. 280. As has been demonstrated above (pp. 6 to 13), respondents' rights are contractual. The Washington courts have expressly recognized that an action at law lies for breach of

[2] It should be further noted that, despite respondents' attempts to describe their interests as real estate, the contractual nature of their rights is expressly recognized by paragraph XVIII in each of the amended bills which bases the claims upon a construction of the respective contracts (Fox, R. 36; Parks, R. 28–29; Ottmuller, R. 29–30).

a contract to deliver water. *State ex rel. Krutz* v. *Washington Irrigation Co., supra; Lombard* v. *Schlofeldt,* 68 Wash. 518; *Huschke* v. *Arcadia Orchards Co.,* 89 Wash. 423; *McDonald* v. *Prosser Falls Land & Power Co.,* 110 Wash. 175; *Hill* v. *Selah and Moxee Irrigation District,* 139 Wash. 120. It is plain that the respondents may sue the United States for any such breach. 28 U. S. C., Secs. 41 (20), 250 (1). See *North Platte C. & C. Co.* v. *United States,* 48 C. Cls. 281, 289–290. The Washington court has likewise held that the remedy at law for breach of a contract to deliver water is adequate. *State ex rel. Krutz* v. *Washington Irrig. Co., supra.* Consequently, the bills of complaint should have been dismissed because of the adequacy of the remedy at law.

These cases raise an important Federal question, and the matter involved is one of great and general public interest. The court's ruling in these cases affect the administration of the Reclamation Law by the Secretary of the Interior and the rights of the land owners in all of the Reclamation Projects throughout the West. The public interest will be promoted by prompt and permanent settlement in this Court of the questions here involved.

The same reasons which prompted the Court of Appeals to grant special appeals (pursuant to Section 26 of Title 18 of the Code of the District

of Columbia) for the determination of the issues here involved, call for the review by this Court at the present stage of the proceeding. Were these cases to be remanded for trials on the merits prior to a determination by this Court of the necessity of the presence of the United States as a party, witnesses would have to be brought from the State of Washington and protracted litigation would be necessary. The disruption to Government business by the attendance, far from their posts of duty, of officials called as witnesses, the expense to all parties concerned of lengthy litigation, and the heavy burden of such litigation on the lower courts will be avoided by a disposal of the cases at this stage upon the grounds here asserted.

Furthermore, there is every reason to believe, because of the generality of the orders here involved and similar orders applicable to other reclamation projects, that a considerable number of similar suits [3] will be filed if the questions of jurisdiction here presented are not promptly settled by this Court. If the contentions herein set forth are sound, trials in such cases can only result in ultimate dismissal for want of jurisdiction and will

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[3] It should be noted in this connection that other closely related cases have recently been or are now before the courts. See, for example, in addition to the *Crandall* case, *supra*, p. 8, *Moody* v. *Johnston*, 66 F. (2d) 999 (C. C. A. 9th), which was again considered by the same court in 70 F. (2d) 835; *Moody* v. *Smith*, 66 F. (2d) 1003; *Moody* v. *Francis*, 66 F. (2d) 1003; *Moody* v. *Scheer*, 66 F. (2d) 1004 (all C. C. A. 9th).

still further increase the needless burden on the courts, the Government and the other parties therein which the present cases will directly entail, unless the decisions below are reversed at this stage of the proceedings.

We submit that these cases call for the exercise of this Court's unquestioned authority (see *United States Shipping Board Merchant Fleet Corporation* v. *Rhodes,* 297 U. S. 383) to review the decision below. *Cf. Spiller* v. *Atchison, Topeka & Santa Fe Ry. Co.,* 253 U. S. 117, 121–122, based upon the more restrictive statutes relating to certiorari then in effect.

Wherefore, it is respectfully submitted that these petitions for writs of certiorari should be granted.

STANLEY REED,
Solicitor General.

AUGUST 1936.

APPENDIX

UNITED STATES CODE, TITLE 43

SEC. 371. *Definitions; "Secretary", "reclamation law", "reclamation fund", "project", and "division of a project."* When used in this chapter—

(a) The word "Secretary" means the Secretary of the Interior.

(b) The words "reclamation law" mean the provisions of this chapter.

(c) The words "reclamation fund" mean the fund provided by the reclamation law.

(d) The word "project" means a Federal irrigation project authorized by the reclamation law.

(e) The words "division of a project" mean a substantial irrigable area of a project designated as a division by order of the Secretary. (Dec. 5, 1924, c. 4, Sec. 4, subsec. A, 43 Stat. 701; Feb. 21, 1925, c. 277, Sec. 1, 43 Stat. 956.)

SEC. 372. *Water right as appurtenant to land and extent of right.*—The right to the use of water acquired under the provisions of the reclamation law shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right. (June 17, 1902, c. 1093, Sec. 8, 32 Stat. 390.)

SEC. 373. *General authority of Secretary of Interior.*—The Secretary of the Interior is hereby

authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this chapter into full force and effect. (June 17, 1902, c. 1093, Sec. 10, 32 Stat. 390; Aug. 13, 1914, c. 247, Sec. 15, 38 Stat. 690.)

* * * * *

SEC. 383. *Vested rights and State laws unaffected by chapter.*—Nothing in this chapter shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this chapter, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof. (June 17, 1902, c. 1093, Sec. 8, 32 Stat. 390.)

* * * * *

SEC. 391. *Establishment of "reclamation fund."*—All moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June 30, 1901, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the 5 per centum of the proceeds of the sales of public lands in the above

States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund", to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and in the State of Texas, and for the payment of all other expenditures provided for in this chapter. (June 17, 1902, c. 1093, Sec. 1, 32 Stat. 388; June 12, 1906, c. 3288, 34 Stat. 259.)

* * * * *

SEC. 411. *Surveys for, location, and construction of irrigation works generally; reports to Congress.*—The Secretary of the Interior is authorized and directed to make examinations and surveys for, and to locate and construct, as provided in this chapter, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed (June 17, 1902, c. 1093, Sec. 2, 32 Stat. 388).

* * * * *

SEC. 421. *Acquisition of lands for irrigation project; eminent domain.*—Where, in carrying out

the provisions of this chapter it becomes necessary to acquire any rights or property, the Secretary of the Interior is authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney General of the United States upon every application of the Secretary of the Interior, under this chapter, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice (June 17, 1902, c. 1093, Sec. 7, 32 Stat. 389).

* * * * *

SEC. 479. *Shutting off water for nonpayment of construction charge.*—No water shall be delivered to the lands of any water-right applicant or entryman who shall be in arrears for more than one calendar year for the payment of any annual construction charge and penalties (Aug. 13, 1914, c. 247, Sec. 6, 38 Stat. 688).

SEC. 480. *Cancellation of water right or entry for nonpayment of construction charge.*—If any water-right applicant or entryman shall be one year in default in the payment of any installment of the construction charges and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such default (Aug. 13, 1914, c. 247, Sec. 3, 38 Stat. 687).

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SEC. 495. *Shutting off water for nonpayment of operation charge.*—No water shall be delivered to the lands of any water-right applicant or entryman who shall be in arrears for more than one calendar year for the payment of any charge for operation and maintenance. (Aug. 13, 1914, c. 247, Sec. 6, 38 Stat. 688.)

SEC. 496. *Cancellation of entry or water right for nonpayment of operation charge.*—If any water-right applicant or entryman shall be one year in arrears in the payment of any charge for operation and maintenance and penalties, or any part thereof, his water-right application, and if he be a homestead entryman his entry also, shall be subject to cancellation, and all payments made by him forfeited to the reclamation fund, but no homestead entry shall be subject to contest because of such arrears. (Aug. 13, 1914, c. 247, Sec. 6, 38 Stat. 688.)

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SEC. 521. *Sale of surplus waters generally.*—The Secretary of the Interior in connection with the operations under the reclamation law is authorized to enter into contract to supply water from any project irrigation system for other purposes than irrigation, upon such conditions of delivery, use, and payment as he may deem proper: *Provided,* That the approval of such contract by the water-users' association or associations shall have first been obtained: *Provided,* That no such contract shall be entered into except upon a showing that there is no other practicable source of water supply for the purpose: *Provided further,* That no water shall be furnished for the uses aforesaid if the de-

livery of such water shall be detrimental to the water service for such irrigation project, nor to the rights of any prior appropriator: *Provided further,* That the moneys derived from such contracts shall be covered into the reclamation fund and be placed to the credit of the project from which such water is supplied. (Feb. 25, 1920, c. 86, 41 Stat. 451.)

SEC. 522. *Lease of water power.*—Whenever a development of power is necessary for the irrigation of lands, under any project undertaken under the said reclamation law, or an opportunity is afforded for the development of power under any such project, the Secretary of the Interior is authorized to lease for a period not exceeding ten years, giving preference to municipal purposes, any surplus power or power privilege, and the moneys derived from such leases shall be covered into the reclamation fund and be placed to the credit of the project from which such power is derived: *Provided,* That no lease shall be made of such surplus power or power privileges as will impair the efficiency of the irrigation project: *Provided further,* That the Secretary of the Interior is authorized, in his discretion, to make such a lease in connection with Rio Grande project in Texas and New Mexico for a longer period not exceeding fifty years, with the approval of the water-users' asssociation or associations under any such project, organized in conformity with the rules and regulations prescribed by the Secretary of the Interior in pursuance of section 498 of this chapter (Apr. 16, 1906, c. 1631, Sec. 5, 34 Stat. 117; Feb. 24, 1911, c. 155, 36 Stat. 930).

SEC. 523. *Storage and transportation of water for irrigation districts, etc.*—Whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under chapter 14 of this title, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however,* That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district,

association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works. (Feb. 21, 1911, c. 141, Sec. 1, 36 Stat. 925.)

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SEC. 661. *Appropriation of waters on public lands; right of way for canals and ditches.*—Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by this section (R. S. Secs. 2339, 2340).

R. S. Sec. 2339 from Act July 26, 1866, c. 262, Sec. 9, 14 Stat. 253.

R. S. Sec. 2340 from Act July 9, 1870, c. 235, Sec. 17, 16 Stat. 218.

SEC. 7408. *Eminent domain by United States.*—The United States is hereby granted the right to exercise the power of eminent domain to acquire the right to the use of any water, to acquire or extinguish any rights, and to acquire any lands or other property, for the construction, operation, repairs to, maintenance or control of any plant or system of works for the storage, conveyance, or use of water for irrigation purposes, and whether such water, rights, lands or other property so to be acquired belong to any private party, association, corporation or to the state of Washington, or any municipality thereof; and such power of eminent domain shall be exercised under and by the same procedure as now is or may be hereafter provided by the law of this state for the exercise of the right of eminent domain by ordinary railroad corporations, except that the United States may exercise such right in the proper court of the United States as well as the proper state court (L. '05, p. 180, Sec. 1).

SEC. 7409. *Rights of United States to use watercourses.*—The United States shall have the right to turn into any natural or artificial watercourse, any water that it may have acquired the right to store, divert, or store and divert, and may again divert and reclaim said waters from said watercourse for irrigation purposes subject to existing rights (L. '05, p. 180, Sec. 2).

SEC. 7410. *Exemptions pending federal investigation.*—Whenever the secretary of the interior of the United States, or any officer of the United States duly authorized, shall notify the commis-

sioner of public lands of this state that pursuant to the provisions of the act of congress approved June 17, 1902, entitled, "An act appropriating the receipts from the sale and disposal of public lands in certain states and territories to the construction of irrigation works for the reclamation of arid lands", or any amendment of said act or substitute therefor, the United States intends to make examinations or surveys for the utilization of certain specified waters, the waters so described shall not thereafter be subject to appropriation under any law of this state for a period of one year from and after the date of the receipt of such notice by such commissioner of public lands; but such notice shall not in any wise affect the appropriation of any water theretofore in good faith initiated under any law of this state, but such appropriation may be completed in accordance with the law in the same manner and to the same extent as though such notice had not been given. No adverse claim to any such waters initiated subsequent to the receipt by the commissioner of public lands of such notice shall be recognized, under the laws of this state, except as to such amount of the waters described in such notice or certificate hereinafter provided as may be formally released in writing by a duly authorized officer of the United States. If the said secretary of the interior or other duly authorized officer of the United States shall, before the expiration of said period of one year, certify in writing to the said commissioner of public lands that the project contemplated in such notice appears to be feasible and that the investigation will be made in detail, the waters specified in such notice shall not be sub-

ject to appropriation under any law of this state for the further period of three years following the date of receipt of such certificate, and such further time as the commissioner of public lands may grant, upon application of the United States or some one of its authorized officers and notice thereof first published once in each week for four consecutive weeks in a newspaper published in the county where the works for the utilization of such waters are to be constructed, and if such works are to be in or extend into two or more counties, then for the same period in a newspaper in each of such counties: Provided, That in case such certificate shall not be filed with said commissioner of public lands within the period of one year herein limited therefor the waters specified in such notice shall, after the expiration of said period of one year, become unaffected by such notice and subject to appropriation as they would have been had such notice never been given: And provided further, that in case such certificate be filed within said one year and the United States does not authorize the construction of works for the utilization of such waters within said three years after the filing of said certificate, then the waters specified in such notice and certificate shall, after the expiration of said last named period of three years, become unaffected by such notice or certificate and subject to appropriation as they would have been had such notice never been given and such certificate never filed (L. '05, p. 180, Sec. 3).

SEC. 7411. *Appropriation—Title to beds and shores.*—Whenever said secretary of the interior or other duly authorized officer of the United States

shall cause to be let a contract for the construction of any irrigation works or any works for the storage of water for use in irrigation, or any portion or section thereof, for which the withdrawal has been effected as provided in section 7410, any authorized officer of the United States, either in the name of the United States or in such name as may be determined by the secretary of the interior, may appropriate, in behalf of the United States, so much of the unappropriated waters of the state as may be required for the project, or projects, for which water has been withdrawn or reserved under the preceding section of this act, including any and all divisions thereof, theretofore constructed, in whole or in part, by the United States or proposed to be thereafter constructed by the United States, such appropriation to be made, maintained and perfected in the same manner and to the same extent as though such appropriation had been made by a private person, corporation or association, except that the date of priority as to all rights under such appropriation in behalf of the United States shall relate back to the date of the first withdrawal or reservation of the waters so appropriated, and in case of filings on water previously withdrawn under said section 7410, no payment of fees will be required. Such appropriation by or on behalf of the United States shall inure to the United States, and its successors in interest, in the same manner and to the same extent as though said appropriation had been made by a private person, corporation or association. The title to the beds and shores of any navigable lake or stream utilized by the construction of any reservoir or

other irrigation works created or constructed as a part of such appropriation hereinbefore in this section provided for, shall vest in the United States to the extent necessary for the maintenance, operation and control of such reservoir or other irrigation works (L. '29, p. 183, Sec. 1. Cf. L. '05, p. 182, Sec. 4).

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